Filed 4/3/19 J.H. v. Super. Ct. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

J.H. et al., Petitioners, v. THE SUPERIOR COURT OF SANTA CRUZ COUNTY, Respondent; SANTA CRUZ COUNTY HUMAN SERVICES DEPARTMENT, Real Party in Interest.	H046587 (Santa Cruz County Super. Ct. No. 18JU00268)

I. INTRODUCTION

J.H., the mother of the child at issue in this juvenile dependency matter, has filed a petition for extraordinary writ challenging the juvenile court's orders terminating the maternal grandmother's guardianship over the child, denying reunification services to the mother, and setting the matter for a Welfare and Institutions Code section 366.26[1] permanency planning hearing.

T.H., the maternal grandmother who was appointed guardian of the child by a probate court prior to the commencement of the dependency proceeding, has also filed a

[1] All further statutory references are to the Welfare and Institutions Code.

petition for extraordinary writ challenging the termination of the guardianship and the setting of the section 366.26 hearing.

For reasons that we will explain, we will deny the mother's and maternal grandmother's writ petitions.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Guardianship*

In May 2018, when the child was approximately one and a half years old, the grandmother was appointed guardian of the child by the probate court in Monterey County, and letters of guardianship were subsequently issued. The grandmother sought the guardianship after the child's parents were arrested on February 13, 2018, for possession of a controlled substance, possession of paraphernalia, and child endangerment. The parents had been at their residence with the maternal aunt, A.L., when law enforcement conducting a probation and parole search found methamphetamine, methamphetamine pipes, used hypodermic needles, spoons commonly used to ingest narcotics, and prescription pills that were accessible to the child, who was at a daycare at the time.

B. *Section 300 Petition*

On October 24, 2018, the Santa Cruz County Human Services Department (the Department) filed a petition under section 300, subdivisions (b)(1) [failure to protect] and (j) [abuse of sibling] alleging that the child (then two years old) came within the jurisdiction of the juvenile court. The petition alleged the following facts.

The grandmother had been provided with safety plans by the Department over the years regarding how to be protective. In 2018, the grandmother became the child's legal guardian after the parents were arrested for possession of controlled substances and child endangerment. The grandmother thereafter allowed unsupervised contact between the child and the parents. In October 2018, the grandmother returned the child to the mother,

so that the mother could get into the program Nueva Esperanza (Door to Hope). On October 11, 2018, the staff found four bags of methamphetamine inside the mother's purse and she was asked to leave the program. The grandmother failed to regain custody of the child. On or about October 13, 2018, the parents took the child with them to Evolving Door.

The mother had a long history of substance abuse that included numerous arrests for being under the influence of a controlled substance, felony possession of a controlled substance, and felony child endangerment. The mother participated in several Department safety plans, which included court-ordered case plan activities, and multiple treatment programs, but she continued to abuse controlled substances while caring for the child. On February 13, 2018, the mother was arrested after methamphetamine, paraphernalia, and prescription pills accessible to the child were found by law enforcement. On October 3 and 10, 2018, the mother tested positive for methamphetamine while the child was in her care.

The father, T.C. (also known as N.B.), had a history of substance abuse and felony criminal arrests and convictions. On February 13, 2018, the father was arrested after methamphetamine, paraphernalia, and prescription pills accessible to the child were found by law enforcement.

T.,[2] who is a maternal half sibling of the child and about four years older than the child, had been the subject of a section 300 petition. From 2013 to 2015, the mother received court-ordered services, including general counseling, parenting classes, and drug treatment. The mother's parental rights were ultimately terminated, and T. was adopted.

[2] Because the initials of T.'s first and last name are the same as other family members, we will use only the first initial.

C. *Detention Hearing*

1. The first day of the detention hearing

At the detention hearing on October 26, 2018, the juvenile court appointed counsel for the child, the mother, the father, and the grandmother. The court also granted requests by the mother, the father, and the grandmother for a one-day continuance of the hearing to the following Monday, October 29, 2018. The court made factual findings and issued a temporary order detaining the child, pending further order by the court at the continued hearing.

2. The second day of the detention hearing

On October 29, 2018, the date of the continued hearing, the Department filed an update with the juvenile court stating that the child's whereabouts were unknown.

The Department explained that, after the initial detention hearing on October 26, 2018, the grandmother told a social worker that the child was with a babysitter. The grandmother was advised that she would receive a call from a social worker regarding arrangements to pick up the child. When the grandmother was called that afternoon, she spoke to the social worker for a period before hanging up on the social worker. A social worker and a sheriff's deputy went to the grandmother's residence that afternoon, but it did not appear that anyone was home. Shortly after the pair left the residence, the grandmother left a message with another social worker stating that she would be home with the child at 4:00 p.m. A social worker tried several times to contact the grandmother by phone without success. That evening, a social worker and two sheriff's deputies went to the grandmother's home. Someone was inside the residence, but the person did not answer the door.

The next day, on October 27, 2018, a social worker and two sheriff's deputies returned to the grandmother's home. The grandmother claimed that a social worker had already picked up the child the prior day around 5:00 p.m. The grandmother stated that she did not know the child's whereabouts. The grandmother also claimed that she had

left a message with a sheriff's deputy saying that the child had been picked up, but when she was asked to show proof, she indicated that her call log had been deleted. A missing persons report was filed with law enforcement.

At the continued detention hearing on October 29, 2018, the mother and the father did not appear in court. At the grandmother's request, the juvenile court set the matter for a contested detention hearing on the following day.

The court also heard testimony from the grandmother concerning the child's whereabouts. The grandmother testified that she last saw the child on Friday around 5:00 p.m., when the child left the grandmother's home with a "CPS worker." The grandmother testified that the person was a female with short dark hair and glasses. The grandmother did not ask for identification and could not describe the woman's vehicle. The juvenile court ordered the child detained and issued a protective custody warrant.

3. The third day of the detention hearing

On October 30, 2018, the contested detention hearing was held. The grandmother and the father appeared in court at the hearing, but the mother did not. In support of detaining the child, the Department relied on the section 300 petition, an investigative narrative, and other documents filed with court concerning the child's whereabouts being unknown.

The grandmother testified in opposition to detaining the child. The grandmother acknowledged that her daughter, the child's mother, was a drug addict. Although the grandmother testified that she did not know whether the mother was actively using methamphetamine in 2018, the grandmother admitted that she obtained legal guardianship for the child after the mother was arrested for drug-related offenses in Monterey County in February 2018. The grandmother testified that the items that were found in the parents' home belonged to the father, and that he "copped to it."

The grandmother testified that she drove the mother and the child to a drug treatment program, Nueva Esperanza, in early October 2018. Between the time the

guardianship was established and the time the mother entered this program, the grandmother admitted that she had allowed the mother to care for the child outside the grandmother's presence, including possibly one time overnight. When the grandmother took the mother and the child to Nueva Esperanza, the grandmother did not provide any paperwork to the program to indicate she was the legal guardian of the child.

The grandmother learned that the child had left Nueva Esperanza after Monterey County Child Protective Services called the grandmother, wanting to see the child. The grandmother testified that she "called around" and got the child. The grandmother had heard that the mother left the program without the child, and that the father picked up the child from the program. The grandmother testified that she ultimately picked up the child from a house in Santa Cruz. She did not remember the address and did not know the person who lived there. The grandmother testified that the mother met her outside of the residence with the child. The grandmother did not know how the child got from the father to the mother.

The grandmother testified that, a few days later, she allowed her other daughter, maternal aunt A.L., to drive the child to another program, Evolving Door, where the mother was located. The grandmother acknowledged that A.L. had a drug problem, too. The grandmother also acknowledged that she did not tell Evolving Door that she was the legal guardian of the child, or that the program needed to contact her if the child left the program. The grandmother testified that the child was out of her care and at the program for two to three days. When Santa Cruz County Child Protective Services was "following up from the Monterey case" and wanted to see the child, the grandmother testified that the mother brought the child to the grandmother's home.

At the conclusion of the contested detention hearing, the juvenile court ordered the child detained. The court also issued an order authorizing entry into the child's home to determine whether the child was present and to take the child into protective custody.

The court further declared T.C. to be the presumed father based upon his voluntary declaration of paternity.

D. *Location of the Child*

In mid-November 2018, the Department filed an update with the juvenile court stating that the child had been located, and that the Department had placed the child in a confidential foster home. The Department reported that law enforcement found the child with the mother in San Jose on November 7, 2018. The mother was arrested on multiple charges, including kidnapping. The Department indicated that it had been notified by law enforcement on November 9, 2018, that an emergency protective order had been issued, preventing the mother and the grandmother from having any contact with the child.

E. *Amended Section 300 Petition*

The record reflects that the Department filed a first amended petition under section 300 in or about late November 2018.[3] The amended petition alleged the following additional facts. During the dependency of the child's maternal half sibling, T., the grandmother placed the half sibling at risk of harm by allowing the mother to have unsupervised access to the half sibling despite agreeing to multiple safety plans that the mother would have only supervised contact. The grandmother also participated in an attempt by the mother to have unauthorized contact with the half sibling by falsely claiming that the mother was the mother's twin sibling, A.L. As a result of this behavior, the grandmother was denied placement of the half sibling. Further, when the child in the instant case was ordered detained by the juvenile court, the grandmother initially refused to turn the child over to the Department. She then falsely claimed that she gave the child

[3] Although the first amended petition contained in the record is not file-stamped, the Department referred to the amended petition in its jurisdiction/disposition report, and the juvenile court at the subsequent jurisdiction hearing made findings based on the amended petition.

to a social worker when the child was actually given to the mother, or to someone who gave the child to the mother.

F. *Jurisdiction/Disposition Report*

The Department filed a jurisdiction/disposition report on November 30, 2018, containing the following information.

1. Prior safety plans involving the grandmother and the child's two half siblings

The grandmother had been involved in safety planning with the Department in which she agreed to keep the child's two older, maternal half siblings safe due to the mother's substance abuse. The Department, however, received multiple reports about the grandmother allowing the mother to have unsupervised contact with her children while there were concerns of ongoing substance use.

For example, between 2011 and 2014 – a period that included safety planning with the grandmother regarding the two half siblings – the mother suffered seven drug-related convictions, including being under the influence of a controlled substance and several convictions for possession of a controlled substance.

Regarding safety planning, in 2011, a social worker developed a safety plan with the grandmother regarding the eldest of two half siblings in which the grandmother agreed: (1) not to allow unsupervised access by the mother and the half sibling's father; (2) not to expose the half sibling to substance abuse by the parents, (3) not to allow visitation when the parents were under the influence, and (4) not to allow either parent to transport that half sibling in a vehicle.

In March 2012, a social worker developed another safety plan with the grandmother regarding the same eldest half sibling in which the grandmother again agreed: (1) not to allow unsupervised access by the parents, (2) not to allow visits if the parents were under the influence, and (3) not to allow transportation by the parents. Thereafter, on the day the mother was released from jail, she spent time with the

grandmother and the eldest half sibling. After the mother and the half sibling were left alone in the garage, the grandmother at some point realized that the pair were missing. The following month, the Department received a report that the mother had moved to different hotels with the half sibling, who was at times unsupervised by any adult.

In 2014, after the mother was arrested for possession of a controlled substance in May of that year, the Department engaged in safety planning regarding the younger of the two maternal half siblings, T. The grandmother was to keep the younger half sibling in her care and supervise all contact between the half sibling and the mother, until otherwise directed by the Department. In July, a social worker again discussed with the grandmother the safety plan that was in place, which provided that the mother would have only supervised visits, after an incident in which the grandmother allowed both half siblings to go with the mother unsupervised.

In 2015, the grandmother acknowledged that she had allowed the eldest of the two half siblings to have unsupervised contact with the mother, including an overnight visit. The Department reminded the grandmother on multiple occasions about the increased risk of harm to T., the younger of the two half siblings, if the grandmother allowed unsupervised contact.

Between 2013 and 2015, the mother received court-ordered services, including general counseling, parenting classes, and drug treatment programs. In December 2015, the mother's parental rights were terminated as to T., the younger of the two half siblings.

During a June 2017 scheduled visit between the two half siblings, the grandmother arrived with the eldest half sibling and a woman, who the grandmother claimed was the maternal aunt but who the social worker believed was the mother. In an e-mail after the visit, the grandmother denied that the mother had posed as the maternal aunt in order to visit the younger of the two half siblings. During the visit, however, the eldest half sibling had referred to the woman as " 'mom,' " and the younger half sibling appeared confused when the woman denied being " 'mom.' "

2. Safety planning involving the child and subsequent incidents

In or about June 2017, the mother signed a safety plan outlining that she would not use drugs or alcohol while caring for the child. Both she and the grandmother also agreed that mother and child would live at the grandmother's home, not the home of the maternal aunt, A.L. The grandmother further agreed to keep the child safe in her home.

On February 13, 2018, the mother and the father were arrested at their residence on drug and child endangerment charges after law enforcement found methamphetamine, methamphetamine pipes, used hypodermic needles, spoons commonly used to ingest narcotics, and pills that were accessible to the child. The maternal aunt, A.L., who admittedly stayed at the residence, was also cited on drug charges. The child, who also lived at the residence with the parents but was at a daycare at the time of the arrests, was taken into protective custody.

After this incident, the grandmother told child protective services that she would not leave the child alone with the parents due to her concerns about their substance use. Upon a petition by the grandmother, the probate court appointed her guardian of the child.

In or about March 2018, a social worker developed a safety plan with the grandmother in which she agreed: (1) not to allow anyone under the influence of any substance to be around the child's maternal cousin, who the grandmother had adopted and whose mother was the maternal aunt, A.L.; (2) to contact law enforcement and to remove the cousin from anyone under the influence of any substance; and (3) to supervise all contact between the cousin and the maternal aunt.

In August 2018, the Department received a report that the mother was allowing the maternal aunt, A.L., to watch mother's child. During the Department's investigation, both parents were in jail and the child was determined to be in the care of the grandmother. The grandmother acknowledged in an e-mail that it was in the best interest of the child not to be alone with the mother at that time. The grandmother was sent a

letter (1) confirming her ongoing responsibility to be protective of the child from any adult using drugs, and (2) warning that her failure to do so could jeopardize her status as the child's guardian.

On October 3, 2018, the mother entered treatment at Nueva Esperanza. She tested positive for methamphetamine at the time of intake. The child was in the mother's care at the program until the father picked up the child on the evening of October 10, 2018. A urine sample taken from the mother that day was positive for methamphetamine. The following day, on October 11, 2018, staff members found four bags of methamphetamine in the mother's purse and urine hidden in the child's toys. The mother was terminated from the program. Although the grandmother had attended a "family night" at the program at some point, the grandmother had not informed the program that she was the child's guardian, or that she needed to be contacted if the mother relapsed.

A social worker contacted the grandmother on the night of October 11, 2018. The grandmother acknowledged that she gave the child to the mother so that the mother could get into the treatment program. The grandmother did not know about the mother's termination from the program, and she did not know the child's whereabouts. The grandmother agreed to contact the social worker if she was able to contact the mother.

On October 18, 2018, the mother's probation officer e-mailed the mother, who responded that she was living at Evolving Door. A social worker went to Evolving Door that day, but the mother was not there at the time of the social worker's visit. The program reported that the parents had arrived approximately five days prior, on October 13, 2018, and that the child had been in the parents' care since their arrival. The father had been terminated from the program after he was found using drugs in the bathroom. The mother was suspected of using drugs, too, and the program planned to ask her to leave by the end of the day or the following day.

That same day, on October 18, 2018, law enforcement conducted a parole compliance check on a male at a residence. Several other people at the residence were

also detained, including the mother and A.L., who law enforcement identified as the mother's twin sister. During a search of the residence, law enforcement found marijuana, methamphetamine, a knife, and drug-related paraphernalia. One of the males who was detained had a digital scale and at least 14 grams of a substance that resembled methamphetamine. Nothing illegal was found on the mother. Law enforcement released the mother and A.L. although it appeared that they were under the influence of narcotics.

That same day, on October 18, 2018, a social worker went to the grandmother's home, but no one answered the door. The social worker left a business card requesting that she be called. The grandmother left a message in the afternoon stating that she was at home with the child, and that the social worker could come to the home. The social worker scheduled a meeting for October 22, 2018.

On October 22, 2018, the social worker went to the grandmother's house for the scheduled visit. The grandmother acknowledged that she became the child's guardian after the mother was arrested due to drug paraphernalia being found in the mother's home. When asked about the child's whereabouts over the past weeks, the grandmother reported that she allowed the child to go with the mother to Nueva Esperanza because it was a supervised residential treatment program and the grandmother felt it would be in the child's best interest to receive services from the program, too. The mother, and later the father, arrived at the grandmother's house. Neither the mother nor the father acknowledged that they were terminated from the treatment program due to the program's concern that they were using drugs. When the social worker disclosed that several reports had been made to the Department regarding the child's safety in the past few weeks, the mother stated that the child was fine and the grandmother became agitated towards the social worker. When the parents and the grandmother were asked who was caring for the child after the mother was terminated from the treatment program, they reported that the child was in the care of the grandmother on October 19, 2018. When the social worker tried to explain why the Department was concerned for the safety of the

child, the parties became angrier. None of the parties acknowledged any safety risk or concerns for the child based on the parents' ongoing substance use and the grandmother's decision to allow them to care for the child unsupervised. Near the end of the meeting, the grandmother accused the social worker of lying in any report generated from the meeting and requested that the social worker leave her home.

On October 23, 2018, the grandmother sent an e-mail to a social worker acknowledging that she should have informed the staff at the treatment programs that she was the child's legal guardian and that she should be contacted before the child leaves the programs. The grandmother further stated that she would buy drug tests to administer to the parents before they are allowed to visit with the child, that she would apply for a "friendly Restraining Order" against the parents so law enforcement could "help [her] enforce [her] boundaries" with the parents, and that she would supervise all the parents' visitations at the child's home. The grandmother also stated that the parents had agreed to daily drug tests and to seek treatment.

On October 26, 2018, after the child was ordered detained by the juvenile court, social workers and sheriff's deputies made several unsuccessful attempts to pick up the child from the grandmother. The next day, the grandmother claimed that a CPS worker had picked up the child the previous day.

During an investigation, law enforcement determined that the grandmother had several inconsistencies in her timeline of events and she "became very agitated when she was being questioned about the inconsistencies in her story." When she was interviewed by law enforcement on October 29, 2018, she was "very calm and did not appear worried about [the child]." Law enforcement determined that the mother and the grandmother exchanged text messages and had one phone call during the afternoon and/or evening of October 26, 2018. The maternal aunt, A.L., admitted to law enforcement that she had communicated with the mother on October 28, 2018, during the time the child was missing. According to A.L., when the mother learned that the child was going to be

detained, the mother went to the grandmother and took the child. The grandmother did not stop the mother. A.L. further reported that the mother's plan was to change her identity and disappear with the child.

The mother did not appear at the continued detention hearing on October 30, 2018, but she submitted a written statement contesting the detention of the child. In the written statement, the mother contended that it was "unjust and unfair" that the grandmother was "being held accountable for [the mother's] mistakes." The mother stated that "[t]he only thing [the child's] maternal grandmother is guilty of is the same thing that CPS, and this Court are similarly guilty of: being manipulated by an addict." The mother stated that she "ha[d] long since manipulated CPS and the court system," and that this "comes with the territory of being an addict." The mother argued that the grandmother had merely given the mother the benefit of the doubt, and that when the "grandmother became aware of [the mother's] relapse, [the grandmother] would not let [the child] out of her sight." The mother stated that she was "not willing to surrender [the child] to CPS," but she would "surrender custody of [the child] to [the grandmother]" as well as "relinquish all parental rights today" if the child was permitted to remain in the home of the maternal grandmother through a guardianship or adoption.

On November 7, 2018, law enforcement found the child and the mother in San Jose at a residence with two other people. The mother had been staying at different locations, and the last residence where the child was found was a cluttered, dirty trailer. The trailer contained a single bedroom, with pornography playing on a television and an apparent adult sex toy on the bed. A wooden knife block with large kitchen knives was located just above where the child slept. There were baby bottles containing spoiled milk on a counter. The child, wearing only a diaper, had a dirty face and matted hair and did not appear to have been bathed. A witness reported that the mother had used drugs in the presence of the child. Law enforcement believed the mother was under the influence

although a subsequent presumptive drug test resulted in a negative result. The mother was arrested on kidnapping charges.

On November 8, 2018, a social worker met with the mother. The mother acknowledged that she and the father had relapsed. She admitted that she continued to use drugs while at a treatment program with the child, but she denied exposing the child to her drug use. When the mother learned that the child had to be turned over to the Department, she "panicked" based on what had happened with the half sibling, T. She stated that, without thinking, she " 'grabbed [the child] and ran.' " When asked how she got the child from the grandmother, the mother stated, " 'I just grabbed her,' " and would not elaborate further. The mother reported that she and the child had been staying with friends until law enforcement found them.

3. The Department's recommendation

The Department recommended that the child be declared a dependent of the court, that the child remain in out-of-home care, that the father be offered reunification services, and that services be bypassed for the mother under section 361.5, subdivision (b)(10), (11), and (13).[4] Regarding the grandmother, the Department recommended that no reunification services be offered to her, and that the guardianship be terminated. The Department believed that the grandmother "ha[d] not demonstrated an ability to hold appropriate boundaries with the parents, nor has she acted protectively of [the child] to ensure the child's safety." The Department stated that the prior history involving the child's half siblings included "similar instances in which the maternal grandmother allowed the mother to have unsupervised contact with the children despite completing

[4] Section 361.5 generally provides that reunification services need not be provided to a parent where reunification services have been terminated as to a sibling or half sibling (subd. (b)(10)), where parental rights have been terminated as to a sibling or half sibling (subd. (b)(11)), or where the parent has "a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem" within the prior three years (subd. (b)(13)).

safety plans with the Department agreeing to not do so." The Department concluded that, "[w]hile the Department does not doubt that the mother, father and maternal grandmother love [the child] very much, they do not seem to understand the implication of their behaviors, or how their behavior has placed [the child] at risk of physical and emotional harm."

A few days later, on December 11, 2018, the Department filed a memorandum with a new recommendation that the father not be offered reunification services. The Department indicated that in November 2018, the father was sentenced to 32 months in prison for felony forgery. The Department requested that the court bypass reunification services to the father pursuant to section 361.5, subdivision (e).[5]

The Department also requested judicial notice of juvenile and criminal court records reflecting that: (1) the child's half sibling, T., was the subject of a petition under section 300, subdivision (b) [failure to protect]; (2) T. was found to be at risk due to the mother's substance abuse, criminal history including drug-related convictions, and continued drug abuse despite being ordered to participate in drug treatment programs; and (3) T. was removed from the mother's care, services were bypassed under section 361.5, subdivision (b)(13), and the mother's parental rights were terminated.

[5] Under section 361.5, subdivision (e), the juvenile court must order reasonable services for an incarcerated parent "unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered . . . , the likelihood of the parent's discharge from incarceration, institutionalization, or detention within the reunification time limitations described in subdivision (a), and any other appropriate factors."

G. *The Grandmother's December 13, 2018 Written Objection Regarding Termination of the Guardianship*

The grandmother filed a written objection on December 13, 2018, to the Department's recommendation that the guardianship be terminated. The grandmother contended that: (1) a section 388 petition must be filed to terminate a guardianship; (2) no report had been prepared by the Department regarding whether the guardianship could remain in place with the child safely in the guardian's home if services were provided, identifying the services needed, and setting forth a plan for providing them; and (3) the Department had not provided clear and convincing evidence that termination of the guardianship was in the child's best interest.

H. *The Department's Motion to Terminate Guardianship*

On December 17, 2018, the Department filed a motion to terminate the guardianship pursuant to section 728 and California Rules of Court, rule 5.620,[6] contending that it was in the best interest of the child to terminate the guardianship. The Department recounted the events that had occurred in 2018, including the grandmother allowing the parents to care for the child while the parents had ongoing substance abuse issues.

The documents attached to the motion included court records regarding the grandmother's appointment as guardian of the child. In the grandmother's petition to be appointed guardian, she stated that the Department of Children and Family Services had initiated a child welfare investigation because the child's parents were incarcerated, and that the department had recommended that she seek a guardianship.

Another document attached to the motion was a November 9, 2018, emergency protective order barring the grandmother from having any contact with the child. The

[6] All further rule references are to the California Rules of Court.

order was based on an application by law enforcement that stated the mother and grandmother were involved in the abduction of the child.

The Department contended that, based on the grandmother's actions to "frustrate the juvenile court's detention order in collusion with the mother," and the grandmother's "inability to either understand the risk, or [her] denial of the risk that mother and father pose to the child," it was in the child's best interests to have the guardianship with grandmother terminated.

I. *The Grandmother's Opposition to the Motion to Terminate the Guardianship and Request for Reunification Services*

On January 18, 2019, the grandmother filed opposition to the Department's motion to terminate the guardianship, and she requested reunification services. The grandmother contended that, because she was the guardian of the child, section 361.5, subdivision (a) required the Department to provide her with family reunification services. She also argued that, under section 366.3, subdivision (b)(2), the juvenile court was required to order the Department to prepare a report that included an evaluation of whether the child could safely remain in the guardian's home if services were provided to the guardian, and a plan for providing those services. In the absence of such a report, the grandmother contended that the Department could not meet its burden of proving by clear and convincing evidence that termination of the guardianship was in the child's best interest.

J. *The Department's Response Regarding Termination of the Guardianship*

On January 22, 2019, the Department filed a response to the grandmother's December 13, 2018 objection and January 18, 2019 opposition to termination of the guardianship. First, the Department contended that section 728, not section 388, governed the termination of a probate guardianship (the type of guardianship at issue here) in juvenile court. Second, the Department argued section 366.3, subdivision (b) did not apply to a probate guardianship, and therefore the Department was not required to

prepare a report under that subdivision addressing whether the guardianship could remain in place. Third, the Department contended that if the juvenile court terminated the probate guardianship before disposition, the guardian would not be entitled to reunification services under section 361.5, subdivision (a), and the Department would not need to prepare a reunification plan. The Department recommended that the guardianship be terminated prior to disposition.

K. *Jurisdiction/Disposition Hearing*

On January 23, 2019, a jurisdiction/disposition hearing was held, along with a hearing on the Department's motion to terminate the guardianship.

The juvenile court admitted into evidence the Department's jurisdiction/ disposition report and various memoranda and updates that were filed by the Department. The court also granted the Department's requests for judicial notice, including judicial notice of court records reflecting the mother's drug-related convictions, prior court orders requiring her to participate in drug treatment programs, and the termination of her parental rights regarding the child's half sibling, T., due to the mother's ongoing drug abuse.

The juvenile court also admitted into evidence documents offered by the mother, including a letter in support from a manager of a program offering counseling and parenting classes, a visitation log describing the mother's recent supervised visit with the child, drug test results, and a court record reflecting that a hearing was scheduled that day regarding the mother's application to family preservation court.

Additionally, the juvenile court admitted into evidence documents offered by the grandmother, including visitation logs that described the grandmother's recent supervised visits with the child. For purposes of the hearing, the court also took judicial notice that the grandmother was the legal guardian of the eldest half sibling of the child, and that the grandmother was the adoptive mother of a cousin of the child.

The Department recommended that the guardianship be terminated. The Department contended that the mother had a long history of relapse and that the grandmother knew about the mother's abuse of methamphetamine. However, after the grandmother became the legal guardian of the child, the grandmother still allowed the child to be with the mother and did not take steps to keep the child safe. The Department argued that there was a "long history of [the grandmother] having difficulty setting boundaries" and keeping "children in her care safe from their drug abusing mother."

Counsel for the child indicated she supported the Department's recommendations regarding jurisdiction, termination of the guardianship, and bypass of reunification services to the mother and father.

Counsel for the mother requested that the guardianship not be terminated, and that the mother receive reunification services.

Counsel for the father did not have an objection to termination of the guardianship, agreed to bypass of services, and submitted on the Department's petition.

Counsel for the grandmother contended that no social worker's report had been prepared "as envisioned in the code" regarding whether termination of the guardianship was in the child's best interest. Counsel further argued that the Department had failed to show by clear and convincing evidence that it was in the child's best interest to terminate the guardianship. Counsel requested a family reunification case plan and contended that "parenting classes and counseling would go a long way in helping the maternal grandmother understand how her decisionmaking puts the child at risk."

L. *Juvenile Court Findings and Orders*

At the end of the January 23, 2019 hearing, the juvenile court found true the allegations in the petition under section 300, subdivisions (b) and (j). The court further stated that it found by clear and convincing evidence that it is in the best interests of the child to terminate the guardianship with the grandmother as legal guardian, and the court

consequently terminated the guardianship. In reaching these determinations, the juvenile court stated the following.

The juvenile court expressed concern that the grandmother was not being protective of the child even though the Department had "worked with [her] to provide safety plans on how to be protective." The court referred to the cases involving the half siblings and also referred to the child's cousin. The court believed the grandmother was "very aware of what she needs to do to keep boundaries and her obligations to be a safe and effective guardian in this case."

The juvenile court observed that in February 2018, the child was living with the parents in a home where controlled substances were accessible to the child, who was a "toddler moving around." In response to that situation, where both parents were incarcerated for substance abuse, the grandmother became the legal guardian. Later that year, the grandmother was warned that her failure to protect the child from exposure to the parents' drug use could result in termination of the guardianship.

Nevertheless, the grandmother, knowing the mother suffered from substance abuse issues, thereafter allowed the child to go with the mother to a drug treatment program in early October 2018, without telling the program that she (the grandmother) was the guardian and should be notified in case of an emergency. The child was later taken by the father, and the mother was terminated from the program, all without the grandmother's knowledge. The child then went with the mother to another program, where the mother was also told to leave.

The juvenile court found that, in the meeting with the social worker that followed these incidents, the "grandmother showed little concern for the fact that she had allowed [the child] to be in such chaotic . . . circumstances," where the child was under the care of both parents while they appeared to be actively using controlled substances. Regarding the grandmother's e-mail to the social worker the following day, in which the grandmother claimed to "understand now" that she should have informed the treatment

programs that she was the guardian, the court stated that it was "incredibly hard to believe" that the grandmother "didn't understand how important it was to set boundaries" after the court had seen the grandmother "at all the hearings concerning the [half] siblings."

The juvenile court further stated that during the dependency proceeding involving T., the younger of the two half siblings, the grandmother continued to allow the mother to have unsupervised visitation with T. The court stated that in 2016, it denied a petition by the grandmother, in which she sought to have T. placed with her, because the court was concerned about the grandmother's ability to protect T. from the mother. The court stated that it was "[v]ery concerning to the Court" that as the child's guardian, the grandmother "continued to show that failure to be protective."

The juvenile court also expressed concern about the grandmother's "honesty and outright falsification of information." Regarding the grandmother's testimony during the contested detention hearing that she had turned over the child to a CPS worker, the juvenile court stated that the grandmother's testimony was "not credible" and that the court did not believe her. The court found that the grandmother "fail[ed] to be protective of [the child] and exposed [the child] to that abduction, where [the child's] whereabouts were unknown between October 26th and November 7th." The court also made reference to the "condition" that law enforcement eventually found the child in at the trailer. The court clarified that it was not finding that the grandmother "isn't loving with [the child] during their visits," referring to recent visitation logs that described the grandmother's supervised visits with the child. Rather, the court was relying on the grandmother's "pattern of falsifying information and feeling very comfortable providing false information to this court."

The juvenile court terminated the guardianship after finding by clear and convincing evidence that it is in the best interests of the child to terminate the guardianship with the grandmother as legal guardian. The court adjudged the child a

dependent of the court, removed the child from the care of the parents, and placed the child in the care of the Department. The court ordered that no reunification services be provided to the mother due to her unsuccessful reunification with the child's half sibling and termination of parental rights; her failure to make a reasonable effort to treat the problems that led to the removal of the half sibling; and her history of extensive, abusive, and chronic drug use and resistance to prior court-ordered treatment or failure or refusal to comply with treatment. (§ 361.5, subd. (b)(10), (11), (13).) The court also determined that the mother had failed to show that reunification would be in the child's best interest. The court further ordered that no reunification services be provided to the father, because he was incarcerated and reunification services would be detrimental to the child. (*Id.*, subd. (e)(1).) The court set a selection and implementation hearing for April 11, 2019.

III. DISCUSSION

A. *The Grandmother's Petition*

We understand the grandmother to contend that the juvenile court's order terminating the guardianship was erroneous because: (1) the Department failed to file a petition under section 388 in seeking to terminate the guardianship, (2) the Department did not provide a report regarding "whether the guardianship could remain intact with the child safely in the guardian's home if services were provided and, if so, identifying the services needed and a plan providing for them," and (3) there was not "clear or convincing evidence that termination [of the guardianship] is in the child's best interest." We consider each contention in turn.

1. Whether a petition under section 388 was required to terminate the probate guardianship

The Department filed a motion under section 728 to terminate the guardianship, and the juvenile court granted the motion. We understand the grandmother to contend

that the court erred in granting the motion because the Department should have brought a petition under section 388.

Separate statutory schemes authorize a court to establish a guardianship over a minor. A "dependency guardianship" may be created by a juvenile court under the Welfare and Institutions Code. (*In re Z.F.* (2016) 248 Cal.App.4th 68, 72.) Alternatively, a "probate guardianship" may be established, as in the instant case, by a probate court under the Probate Code before dependency proceedings have commenced. (*In re Z.F.*, *supra*, at p. 72.)

"Recognizing that probate guardianships and dependency guardianships exist under separate statutory schemes is important background for a discussion of the appropriate procedures for termination. For example, a juvenile court proceeding to terminate a *dependency* guardianship is initiated by filing a petition to terminate legal guardianship. [Citation.] The contents of a petition to terminate a dependency guardianship are the equivalent of that for a section 388 petition for modification. [Citations.]" (*In re Z.F.*, *supra,* 248 Cal.App.4th at p. 72.)

"The procedure for terminating a *probate* guardianship in a dependency proceeding is set forth in section 728 and rule 5.620(e). [Citation.]" (*In re Z.F.*, *supra,* 248 Cal.App.4th at p. 73.) Section 728, subdivision (a) states that "[t]he juvenile court may terminate . . . a guardianship of the person of a minor previously established under the Probate Code . . . if the minor is the subject of a petition filed under Section 300." Rule 5.620(e) similarly states that, "[a]t any time after the filing of a petition under section 300 and until the petition is dismissed or dependency is terminated, the court may terminate . . . a guardianship of the person previously established by . . . the probate court." Pursuant to section 728, subdivision (a) and rule 5.620(e), the social worker makes an initial recommendation to the juvenile court to terminate the probate guardianship. (See *A.H. v. Superior Court* (2013) 219 Cal.App.4th 1379, 1387-1388

(*A.H.*).) The juvenile court then orders the responsible agency to file the recommended motion. (§ 728, subd. (a); rule 5.620(e); see *A.H.*, *supra*, at p. 1388.)

In sum, "section 388 is not the proper vehicle for terminating a previously established probate guardianship in a dependency case." (*In re Z.F.*, *supra*, 248 Cal.App.4th at p. 75, fn. omitted; accord, *In re Xavier R.* (2011) 201 Cal.App.4th 1398, 1415.) Instead, "the exclusive procedures set forth in section 728" must be utilized. (*In re Angel S.* (2007) 156 Cal.App.4th 1202, 1207.)

The exclusive procedures set forth in section 728 were followed in this case. Upon the social workers' recommendation in the jurisdiction/disposition report that the guardianship be terminated, the juvenile court ordered the Department to file a motion under section 728. The Department subsequently did so. We therefore determine that the juvenile court properly terminated the guardianship based on the motion by the Department under section 728 rather than section 388.

2. Whether a report regarding services was required before the juvenile court could consider terminating the probate guardianship

The grandmother next contends that the Department did not provide a report regarding "whether the guardianship could remain intact with the child safely in the guardian's home if services were provided and, if so, identifying the services needed and a plan providing for them." In making this contention, we understand the grandmother to be relying on section 366.3, subdivision (b)(2), which her counsel cited in the juvenile court in support of the same argument. The grandmother's counsel also cited *In re Jessica C.* (2007) 151 Cal.App.4th 474, for the proposition that a court's failure to order the report described in section 366.3, subdivision (b), to evaluate whether the guardianship can be "saved," is an abuse of discretion and reversible error.

The Department contends, as it did below, that the report described in section 366.3, subdivision (b)(2) was not required in this case. According to the Department, section 366.3 applies to the termination of dependency guardianships

established pursuant to sections 360 or 366.26, not probate guardianships terminated before disposition as in this case. The Department further argues that the grandmother's reliance on *In re Jessica C.* is misplaced, because *In re Jessica C.* involved the termination of a dependency guardianship that had originally been established as part of the permanent plan pursuant to section 366.26. (See *In re Jessica C., supra*, 151 Cal.App.4th at p. 478; see also *id.* at pp. 482-484.)

A guardian appointed under the Probate Code is entitled to receive reunification services pursuant to Welfare and Institutions Code section 361.5, subdivision (a).[7] (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 250.) As in the case of a parent, "[s]ection 361.5 mandates that reunification services for parents or guardians be offered at the dispositional hearing—i.e., 'whenever a child is removed from a parent's or guardian's *custody* . . . .' (§ 361.5, subd. (a), italics added.) It is at the dispositional stage that the child is removed from the parent's or guardian's custody; prior to that point, the child is being detained. 'The statutes and rules governing dependency actions clearly require that a family reunification plan be developed as part of any dispositional order removing a child from its home.' [Citation.]" (*Id.* at pp. 252-253.)

However, "a predependency or Probate Code guardianship may legally be terminated before reunification services are offered to the guardian." (*In re Merrick V., supra*, 122 Cal.App.4th at p. 253.) Section 728 "gives the juvenile court the authority to terminate a Probate Code guardianship at any stage in the dependency proceeding, including at the detention hearing or the jurisdictional hearing." (*In re Merrick V., supra*, at p. 253.) If the probate guardianship is terminated predisposition, section 361.5 "does not require that services be provided to [the] *former* probate guardian after the juvenile

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[7] Section 361.5, subdivision (a) states in part: "[W]henever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians."

court has terminated the probate guardianship." (*A.H., supra,* 219 Cal.App.4th at p. 1394, some italics omitted.)

In this case, the grandmother fails to establish that the report described in section 366.3, subdivision (b)(2) was required in this case. Subdivision (b)(2) on its face applies to "proceedings to terminate a legal guardianship that has been granted pursuant to Section 360[8] or 366.26.[9]" (§ 366.3.)[10] The guardianship in this case was not granted

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[8] Section 360 states in part: "After receiving and considering the evidence on the proper disposition of the case, the juvenile court may enter judgment as follows: [¶] (a) Notwithstanding any other provision of law, if the court finds that the child is a person described by Section 300 and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, it may, in addition to or in lieu of adjudicating the child a dependent child of the court, order a legal guardianship, appoint a legal guardian, and issue letters of guardianship, if the court determines that a guardianship is in the best interest of the child, provided the parent and the child agree to the guardianship, unless the child's age or physical, emotional, or mental condition prevents the child's meaningful response. The court shall advise the parent and the child that no reunification services will be provided as a result of the establishment of a guardianship. The proceeding for the appointment of a guardian shall be in the juvenile court." (§ 360, subd. (a).)

[9] Section 366.26 states in part: "(a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (d) of Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings. . . . [¶] (b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, . . . shall make findings and orders in the following order of preference: [¶] (1) Terminate the rights of the parent or parents and order that the child be placed for adoption . . . . [¶] (2) Order, without termination of parental rights, the plan of tribal customary adoption . . . . [¶] (3) *Appoint a relative or relatives with whom the child is currently residing as legal guardian or guardians for the child, and order that letters of guardianship issue*. [¶] (4) . . . [I]dentify adoption or tribal customary adoption as the permanent placement goal . . . . [¶] (5) *Appoint a nonrelative legal guardian for the child and order that letters of guardianship issue*. [¶] (6) Order that the child be permanently placed with a fit and willing relative . . . . [¶] (7) Order that the child remain in foster care . . . ." (§ 366.26, subds. (a) & (b)(1)-(7), italics added.)

[10] Section 366.3, subdivision (b) states: "(1) If the court has dismissed (continued)

pursuant to these sections. Rather, the guardianship was established under the Probate Code by the probate court. The grandmother fails to provide legal authority indicating that the report described by section 366.3, subdivision (b)(2) was required to be prepared

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dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child. [¶] (2) Notwithstanding Section 1601 of the Probate Code, *the proceedings to terminate a legal guardianship that has been granted pursuant to Section 360 or 366.26* shall be held either in the juvenile court that retains jurisdiction over the guardianship as authorized by Section 366.4 or the juvenile court in the county where the guardian and child currently reside, based on the best interests of the child, unless the termination is due to the emancipation or adoption of the child. The juvenile court having jurisdiction over the guardianship shall receive notice from the court in which the petition is filed within five calendar days of the filing. *Prior to the hearing on a petition to terminate legal guardianship pursuant to this subdivision*, the court shall order the county department of social services or welfare department having jurisdiction or jointly with the county department where the guardian and child currently reside to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in, or be returned to, the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended family maintenance or reunification services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, either juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328. [¶] (3) Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents." (Italics added.)

in this case. (See, e.g., *D.T. v. Superior Court* (2015) 241 Cal.App.4th 1017, 1038 [§ 366.3 came "into play" after the case "entered the post-permanency phase . . . , when a guardianship was established as the permanent plan but later failed"].)

3. Whether termination of the guardianship was in the child's best interest

The grandmother lastly contends that there was not "clear or convincing evidence that termination [of the guardianship] is in the child's best interest."

"[A] juvenile court has jurisdiction to terminate a predependency probate guardianship if it is in the best interest of the minor to do so. [Citation.]" (*A.H.*, *supra*, 219 Cal.App.4th at p. 1392; see Prob. Code, § 1601 [probate guardianship may be terminated "if the court determines that it is in the ward's best interest to terminate the guardianship"].) In reviewing a juvenile court's order terminating a probate guardianship, the Courts of Appeal have applied either the abuse of discretion test or the substantial evidence test. (See, e.g., *A.H.*, *supra*, at p. 1392 [abuse of discretion]; *In re Xavier R.*, *supra*, 201 Cal.App.4th at p. 1416 [substantial evidence].)

Under the abuse of discretion standard, " ' "a reviewing court will not disturb [a trial court's] decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." ' [Citations.] . . . ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." ' " (*In re Stephanie M*. (1994) 7 Cal.4th 295, 318-319.)

Even under the abuse of discretion test, factual findings are reviewed for substantial evidence. (*In re C.B.* (2010) 190 Cal.App.4th 102, 123.) Under the substantial evidence test, we draw all reasonable inferences from the evidence to support the findings and order of the juvenile court and review the record in the light most favorable to the court's determinations. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193; *In re Xavier R.*, *supra*, 201 Cal.App.4th at p. 1416 ["we resolve all evidentiary disputes in favor of the court's rulings"].) "We do not second-guess the court's

credibility calls or reweigh the evidence. [Citation.]" (*In re Merrick V., supra*, 122 Cal.App.4th at p. 254.)

In this case, whether we review the juvenile court's order under either the abuse of discretion or the substantial evidence standard, we find no error in the court's termination of the guardianship.

The record reflects that the parents had substance abuse issues. The grandmother was well-aware of the mother's long-standing problem with substance abuse and the need for boundaries to keep the child safe, as the grandmother had been involved in safety planning with the Department regarding the child and earlier regarding the two older half siblings. Indeed the grandmother sought guardianship of the child during the first half of 2018, after the parents were arrested on drug-related and child endangerment charges. Thereafter, the grandmother acknowledged in an e-mail that it was in the child's best interest not to be left alone with the mother. The Department also confirmed with the grandmother her ongoing responsibility to be protective of the child with respect to any adult using drugs, and she was warned that her failure to do so could jeopardize her status as the child's guardian.

Despite the grandmother's awareness of the mother's substance abuse and the need to protect the child, the grandmother allowed the mother to care for the child at a drug treatment program in early October 2018, without informing the program that the grandmother should be contacted as guardian of the child. Upon entry into the program, and again shortly before termination from the program, the mother tested positive for methamphetamine. The child and later the mother left the program, unbeknownst to the grandmother. That same month, the child was in the parents' care at another drug treatment program, where both parents were ultimately terminated due to drug use or suspected drug use. In a subsequent meeting with a social worker, the grandmother did not acknowledge any safety risk or concerns for the child based on the parents' ongoing substance use and her decision to allow the parents to care for the child unsupervised.

Moreover, the juvenile court found that the grandmother had engaged in a "pattern of falsifying information and feeling very comfortable providing false information to [the] court." The court expressly found that the grandmother was not credible when she testified that she had turned over the child to a person who she believed was a CPS worker. As a result of the grandmother's conduct in this regard, the child's whereabouts were unknown for nearly two weeks. The child was later discovered to have been exposed to the mother's drug use during this period, living at different locations, and not being adequately cared for by the mother.

On this record, substantial evidence supports the juvenile court's determination that termination of the guardianship was in the child's best interest, and we conclude that the court did not abuse its discretion in ordering termination of the guardianship. (Prob. Code, § 1601; *In re Xavier R., supra*, 201 Cal.App.4th at p. 1416; *A.H., supra*, 219 Cal.App.4th at p. 1392.)

In the grandmother's petition, we understand her to "dispute[]" certain facts that were set forth in the Department's motion to terminate the guardianship and in an investigative narrative that was attached to the Department's motion. As the reviewing court, however, under the substantial evidence standard of review, "we resolve all evidentiary disputes in favor of the court's rulings and draw all reasonable inferences to support them." (*In re Xavier R., supra*, 201 Cal.App.4th at p. 1416.) "We do not second-guess the court's credibility calls or reweigh the evidence. [Citation.]" (*In re Merrick V., supra*, 122 Cal.App.4th at p. 254.) As a result, the asserted factual disputes raised by the grandmother do not provide a basis for determining that the juvenile court erred in ordering the guardianship terminated.

B. *The Mother's Petition*

We understand the mother to contend that (1) the guardianship should not have been terminated and the grandmother was entitled to receive reunification services, (2) there was not substantial evidence to support the juvenile court's determination to

bypass reunification services for the mother, and (3) there was substantial evidence that reunification was in the child's best interest. In support of her petition, the mother has provided this court with several documents that do not appear to have been presented to or admitted into evidence in the juvenile court.

Regarding the mother's contention that the trial court erred in terminating the guardianship and that the grandmother was entitled to reunification services, we reject these contentions for the reasons we have set forth regarding the grandmother's petition. Regarding the mother's contentions that the juvenile court erred in not ordering reunification services, we first set forth general legal principles regarding bypass of services.

1. General legal principles regarding reunification services

Section 361.5, subdivision (a) generally mandates that reunification services are to be provided whenever a child is removed from the parent's custody. However, subdivision (b) of section 361.5 sets forth a number of circumstances in which reunification services may be bypassed. "These bypass provisions represent the Legislature's recognition that it may be fruitless to provide reunification services under certain circumstances. [Citation.]" (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 597.) The bypass finding must be made "by clear and convincing evidence." (§ 361.5, subd. (b).)

We review the juvenile court's bypass finding under the substantial evidence test. (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.) As we have set forth above, under the substantial evidence test we draw all reasonable inferences from the evidence to support the findings and order of the juvenile court and review the record in the light most favorable to the court's determinations. (*In re Heather A., supra,* 52 Cal.App.4th at p. 193; *In re Xavier R., supra*, 201 Cal.App.4th at p. 1416 ["we resolve all evidentiary disputes in favor of the court's rulings"].) "We do not second-guess the court's

credibility calls or reweigh the evidence. [Citation.]" (*In re Merrick V., supra*, 122 Cal.App.4th at p. 254.)

In this case, the juvenile court ordered that reunification services were not to be provided to the mother pursuant to section 361.5, subdivision (b)(10), (11) and (13). "[O]nly one valid ground is necessary to support a juvenile court's decision to bypass a parent for reunification services." (*In re Madison S.* (2017) 15 Cal.App.5th 308, 324; accord, *Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1121.) As we next explain, substantial evidence supports the court's order under section 361.5, subdivision (b)(11) and (13).[11]

2. Bypass of reunification services under section 361.5, subdivision (b)(11)

Under section 361.5, subdivision (b)(11), reunification services may be denied to a parent whose parental rights have been terminated as to a half sibling, if the court finds that the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the . . . half sibling." (§ 361.5, subd. (b)(10), (11).)

In this case, the mother contends that "[t]he court had substantial evidence that [she] treated her previous problems. The social worker confirmed that on the day she met with the family, the mother tested clean for illegal substances." In this regard, we understand the mother to be referring to evidence that she tested negative for drugs on October 22, 2018. The mother argues that because she "made reasonable efforts to treat the problems that led to the [half] sibling's removal," "the court should have ordered family reunification services for [her]."

"The reasonable effort requirement focuses on the extent of a parent's efforts, not whether he or she has attained 'a certain level of progress.' [Citation.] 'To be reasonable, the parent's efforts must be more than "lackadaisical or half-hearted." '

[11] The Department concedes that substantial evidence does not support bypass of reunification services under section 361.5, subdivision (b)(10).

[Citations.] However, '[t]he "reasonable effort to treat" standard "is not synonymous with 'cure.' " ' [Citation.]" (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914 (*R.T.*).) Nonetheless, "[i]t is certainly appropriate for the juvenile court to consider the duration, extent and context of the parent's efforts, as well as any other factors relating to the quality and quantity of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the focus of the inquiry, a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the reasonableness of the effort made. [¶] Simply stated, although success alone is not the sole measure of reasonableness, the measure of success achieved is properly considered a factor in the juvenile court's determination of whether an effort qualifies as reasonable." (*Id.* at pp. 914-915, italics omitted.)

In this case, substantial evidence supports the juvenile court's determination that the mother had not "made a reasonable effort to treat the problems that led to the removal of the . . . half sibling" T. (§ 361.5, subd. (b)(11).)

Between 2013 and 2015, the mother received court-ordered services, including drug treatment programs. In 2015, the mother's parental rights were terminated as to T.

The section 300 petition regarding the child at issue in this proceeding was filed in 2018. In February 2018, the mother was arrested after methamphetamine, methamphetamine pipes, used hypodermic needles, and spoons commonly used to ingest narcotics were found in her residence. The grandmother was thereafter appointed guardian of the child by the probate court. In early October 2018, the mother tested positive for methamphetamine upon entry into a drug treatment program and again approximately one week later before she was terminated from the program. Methamphetamine and paraphernalia were also found in her belongings. Later that same month, another drug treatment program intended to ask the mother to leave due to suspected drug use. That same month, law enforcement found the mother at a residence where methamphetamine and drug-related paraphernalia were located. The mother

appeared to be under the influence of drugs. In a written statement dated October 30, 2018, the mother admitted being an addict and relapsing. During this period when the mother absconded with the child through early November 2018, it was reported that the mother had used drugs. On November 8, 2018, the mother admitted to a social worker that she had relapsed, and that she continued to use drugs while at a treatment program with the child. The mother failed to report for drug testing on October 30, November 2, and December 17, 20, and 25, 2018, and January 3, 2019. Mother's sample for another drug test in January 2019, had apparently been diluted. At the disposition hearing on January 23, 2019, the juvenile court found that the mother was "still actively using controlled substances."

At the disposition hearing, the mother provided a letter dated that day, January 23, 2019, from the manager of a program offering counseling and parenting classes. The letter did not indicate when, and to what extent, mother was participating in the program, including with respect to any drug treatment programming. The mother also provided evidence that a court hearing was scheduled that same day regarding her application to family preservation court. However, "the juvenile court properly could conclude [these] recent effort[s], even assuming the effort[s] were substantiated, [were] simply too little, too late." (*R.T.*, *supra*, 202 Cal.App.4th at p. 915.)

In view of the record, including the mother's continued drug use after her parental rights had been terminated as to the half sibling, ample evidence supports the juvenile court's determination that the mother had not made a reasonable effort to treat the problems that led to the half sibling's removal. Hence, the juvenile court properly concluded that the mother came within the provision of section 361.5, subdivision (b)(11).

3. Bypass of reunification services under section 361.5, subdivision (b)(13)

Under subdivision (b)(13), reunification services may be denied to a parent who "has a history of extensive, abusive, and chronic use of drugs" *and* either "has resisted

prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition" *or* "has failed or refused to comply with a program of drug . . . treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible." (§ 361.5.)

The mother contends that there was not substantial evidence that she was ordered to participate in drug treatment, that she resisted prior treatment within the three years prior to the Department's filing of the petition, or that she refused to attend a program on two separate occasions. She also argues that she did not resume using drugs based on evidence that she tested "clean" on two occasions, that is, the day when the social worker met with the whole family and the day she was arrested for taking the child.

The provision addressing resistance to treatment "does not require proof that the prior treatment occur during the three-year period; it requires proof that the *resistance* to such treatment occur." (*Laura B. v. Superior Court* (1998) 68 Cal.App.4th 776, 780.) Specifically, the provision requires a showing that "a parent has previously undergone or enrolled in substance abuse rehabilitation. Then, during the three years prior to the petition being filed, the parent evidenced behavior that demonstrated resistance to that rehabilitation. Such proof may come in the form of dropping out of programs, but it may also come in the form of resumption of regular drug use after a period of sobriety." (*Ibid.*) In other words, "the concept of resistance does not require opposition to treatment by direct action. [Citation.]" (*Ibid.*) Rather, it may include the parent's completion of rehabilitation programs but "failure to maintain any kind of long-term sobriety." (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 73 (*Randi R.*).)

Further, an "order that [a parent] enter a rehabilitation program as a condition of probation must be regarded as the functional equivalent of enrollment in a drug program." (*In re Brian M., supra,* 82 Cal.App.4th at p. 1402.) A parent does not have to accept probation on the terms offered, but if the parent does, the parent's agreement

becomes the basis of a court order. (*Ibid.*) There is "no difference between this and the situation where a parent shows up for a program, signs the necessary papers, and then never attends or participates. In both situations, the individual has agreed to attend a program and then failed to do so, which is precisely the kind of conduct" that can be "described as resistance to prior treatment." (*Id.* at pp. 1402-1403.) "Such facts are sufficient to bring the statute into play, and vest the juvenile court with discretion to deny reunification services." (*Id.* at p. 1403.)

In this case, substantial evidence supports the juvenile court's finding that the mother came within the provision of section 361.5, subdivision (b)(13).

First, there is ample evidence that the mother "has a history of extensive, abusive, and chronic use of drugs." (§ 361.5, subd. (b)(13).) Between 2011 and 2014, the mother suffered seven drug-related convictions, including being under the influence of a controlled substance and several convictions for possession of a controlled substance. In 2018, the mother admitted that she was an "addict," and that she even used drugs while at a treatment program with the child.

Second, the record reflects that the mother was ordered to participate in substance abuse treatment in connection with two criminal cases against her in Santa Clara County and Santa Cruz County in 2014, including as a condition of probation in a Santa Clara County Superior Court case.

Third, there is substantial evidence supporting the juvenile court's finding that the mother "resisted" the prior court-ordered treatment during the three-year period prior to the filing of the petition. (§ 361.5, subd. (b)(13).) As we have recounted above, the record reflects that the mother abused controlled substances repeatedly in 2018 and into 2019, and that she did not maintain a long period of sobriety.

Accordingly, the juvenile court properly determined that the mother came within the provision of section 361.5, subdivision (b)(13).

4. Best interest of the child under section 361.5, subdivision (c)

When a juvenile court finds that a parent is described by subdivision (b)(11) or (13) of section 361.5, the court must deny reunification services unless it finds, by clear and convincing evidence, that reunification is in the best interest of the child. (§ 361.5, subd. (c).)

In this case, the mother contends that substantial evidence supports a finding that reunification would be in the child's best interest. The mother argues that she "brought some comfort items for the [child]" during a visit, and that the child "appeared bonded with mother."

"In determining [the child's] best interests, the 'court should consider "a parent's current efforts and fitness as well as the parent's history"; "[t]he gravity of the problem that led to the dependency"; the strength of the bonds between the child and the parent and between the child and the caretaker; and "the child's need for stability and continuity." ' [Citation.] '[A]t least part of the best interest analysis must be a finding that further reunification services have a likelihood of success. In other words, there must be some "reasonable basis to conclude" that reunification is possible before services are offered to a parent who need not be provided them.' [Citation.]" (*In re G.L.* (2014) 222 Cal.App.4th 1153, 1164.) "It is the parent's burden to prove that the minor would benefit from the provision of court-ordered services. [Citation.] We review a juvenile court's best interest determination in this context for abuse of discretion. [Citation.]" (*Jennifer S.*, *supra*, 15 Cal.App.5th at pp. 1124-1125.)

Reunification was found not to be in the children's best interests in *Randi R.*, *supra*, 64 Cal.App.4th 67, which involved a mother who had a long history of drug use, rehabilitation attempts, and relapses. In that case, two of the children had remained in the mother's care for more than two years following a prior dependency (*id*. at p. 69), and the mother had entered "yet another drug abuse rehabilitation program" after the children were removed from her care (*id.* at p. 73). The appellate court upheld the lower court's

decision to deny reunification services and its finding that the mother had not shown that reunification would be in the children's best interests, noting that the mother had had "many opportunities to gain control of her life" and that the children's future "should not be sacrificed to give her another chance to try to get and stay sober." (*Ibid.*)

In this case, the juvenile court could reasonably determine that the mother's " ' "current efforts and fitness as well as [her] history" ' " showed that she still had a serious problem with substance abuse addiction that posed a danger to the child's safety. (*In re G.L., supra,* 222 Cal.App.4th at p. 1164.) The mother's parental rights were terminated as to the half sibling T. in 2015, after she received services, including drug treatment. The record reflects her continued drug use in 2018, including while she was attending drug treatment programs with the child in her care. The court found that the mother was still actively using controlled substances based on her failure to report for drug testing and the evidence of a diluted sample in January 2019. At the disposition hearing, counsel for the mother stated that "[the mother] does not deny her substance abuse addiction." Although the mother provided documentation at the hearing regarding her apparent efforts to resume treatment for substance abuse, the documentation was not specific regarding the extent of her participation. Moreover, in view of the evidence that the mother's numerous prior attempts at drug treatment had not been successful, the juvenile court could find that the child's future "should not be sacrificed to give [the mother] another chance to try to get and stay sober." (*Randi R., supra,* 64 Cal.App.4th at p. 73.)

The juvenile court could also reasonably find that " ' "[t]he gravity of the problem that led to the dependency" ' " (*In re G.L., supra,* 222 Cal.App.4th at p. 1164) weighed in favor of finding that reunification was not in the child's best interest. The mother had a lengthy history of drug abuse, which resulted in numerous drug-related convictions and the loss of parental rights to the half sibling. The mother continued to use drugs for a substantial period of the child's life.

The record further supports a finding that the bond between the mother and the child was outweighed by " ' "the child's need for stability and continuity." ' " (*In re G.L., supra,* 222 Cal.App.4th at p. 1164.) At the disposition hearing, the mother provided a visitation log reflecting that she was affectionate with the child during one visit and, by the end of the visit, the child also expressed affection toward the mother. We observe that a child's "bond[] with the mother cannot be the sole basis for a best interest finding." (*In re William B.* (2008) 163 Cal.App.4th 1220, 1229.) Moreover, the juvenile court in this case found that the mother and the child had a "visiting relationship," where the child "seem[ed] to be able to separate from the visits." Regarding the child's need for stability and continuity, the record reflects that the child was moved into and out of the mother's care due to the mother's drug use.

Lastly, the record supports a finding that reunification services would not have " 'a likelihood of success.' " (*In re G.L., supra,* 222 Cal.App.4th at p. 1164.) The mother had numerous unsuccessful attempts at rehabilitation. In the three months prior to the disposition hearing alone, the mother had been terminated from one program after being found with methamphetamine and paraphernalia and testing positive for methamphetamine; another drug treatment program intended to ask the mother to leave due to suspected drug use; law enforcement found the mother at a residence where she appeared to be under the influence; and the mother reportedly used drugs after absconding with the child. Further, to the extent the mother was not incarcerated, she failed to report for several drug tests between October 2018 and early January 2019. Her sample for another drug test in January 2019 appeared to have been diluted. In view of this record, the juvenile court could therefore determine that there was no " ' "reasonable basis to conclude" that reunification [was] possible.' " (*In re G.L., supra,* at p. 1164.)

Accordingly, we conclude that the juvenile court did not err by denying reunification services to the mother.

IV. DISPOSITION

The petitions for extraordinary writ are denied.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.

J.H. v. Superior Court
H046587